

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MORGAN KEEGAN & COMPANY, §
INC., §
Petitioner, § CAUSE NO. 4:10-CV-04308
§
VS. §
§
JOHN J. GARRETT, ET AL., § JUDGE LYNN N. HUGHES
Respondents. §

**EMERGENCY MOTION OF DR. CRAIG MCCANN TO INTERVENE
UNDER RULE 24, FED.R.CIV.P.**

TO THE HONORABLE JUDGE OF SAID COURT:

Movant, Dr. Craig McCann, a non-party, timely moves to intervene in this action pursuant to Rule 24, Fed.R.Civ.P., and in support, would show the Court the following:

1. Movant seeks intervention as a matter of right under Rule 24(a)(2), Fed.R.Civ.P., as a non-party who has a direct, substantial, non-collateral and legally protectable interest relating to the transaction involved in the pending lawsuit. *New Orleans Public Service v. United Gas Pipe Line*, 732 F.2d 452, 463 (5th Cir. 1984); *Valley Ranch Dev. Col, Ltd., v. FDIC*, 960 F.2d 550, 556 (5th Cir. 1992). Alternatively, movant requests permissive intervention under Rule 24(b)(1)(B).
2. The disposition of the underlying suit pursuant to this Court's Order [Doc.# 34] and Opinion [Doc.#33] of September 30, 2011 adversely affects Movant's interest. The existing parties do not adequately represent the Movant's interest. *State of Texas v. U. S. Dept. of Energy*, 754 F.3d 550, 552 (5th Cir. 1985).

3. As an expert witness, Dr. McCann's "most precious asset is his professional reputation." *Cooter & Gell v. Hartmarx Corp*, 496 U.S. 384 412 (1990) (Stevens, J., concurring in part and dissenting in part), cited in *Walker v. City of Mesquite*, 129 F.3d 831, 832, n.3 (5th Cir. 1997). Dr. McCann has standing to bring this motion because the Court's collateral comments regarding him in its order vacating the arbitration award "must be seen as a blot on [his] professional record." *Walker, supra*, 129 F.3d at 832-33; see also *In re Smith*, 656 F.2d 1101, 1106 (5th Cir. 1981) (no legitimate interest served by an "official public smear" of an individual when that individual "has not been provided a forum in which to vindicate his rights.") These comments have already irreparably injured Dr. McCann and have the potential to further injure him by limiting his ability to serve as expert witness in other proceedings.
4. The Court's adverse statements in its Opinion concerning him, which were made in his absence, without his knowledge, without the ability to defend himself and without due process of law.
5. Movant seeks to intervene for the limited purpose of protecting the aforementioned interests, filing and obtaining a ruling on his EMERGENCY MOTION OF MOVANT, CRAIG MCCANN, TO WITHDRAW AND EXPUNGE ALL REFERENCES TO CRAIG MCCANN AND HIS TESTIMONY IN THE COURT'S OPINION ACCOMPANYING ITS ORDER VACATING ARBITRATION AWARD, dated September 30, 2011, which is attached hereto as Exhibit A.
6. Petitioner opposes this Motion and all related relief. Respondents do not oppose this Motion.

Dated: October 28, 2011.

Respectfully submitted,

/s/ Braden W. Sparks
Braden W. Sparks
BRADEN W. SPARKS, P.C.
State Bar No. 18874500
8333 Douglas Avenue
Suite 1000
Dallas, TX 75225
214.750.3372
214.696.5971 Facsimile

ATTORNEY FOR CRAIG J. MCCANN

CERTIFICATE OF CONFERENCE

The undersigned spoke with Terry Weiss, attorney for Morgan Keegan on October 28, 2011, regarding the merits of this motion and he advised the undersigned he *opposes* the relief requested herein. The undersigned spoke with Paul Dobrowski, attorney for the Garrett parties on October 28, 2011, regarding the merits of this motion and he advised the undersigned he *does not oppose* the relief requested herein. Therefore, this motion is presented to the Court for its review and consideration.

/s/ Braden W. Sparks
Braden W. Sparks, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, 2011, I electronically filed the foregoing document with the clerk of court for the U.S. District Court for the Southern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys who have consented in writing to accept this Notice as service of this document by electronic means:

ATTORNEYS FOR MORGAN KEEGAN & COMPANY, INC.:

Pamela Ferguson Sperber
Mary-Olga Lovett
GREENBERG TRAURIG, LLP
1000 Louisiana St., Suite 1700
Houston, TX 77002
sperberp@gtlaw.com
LovettM@gtlaw.com

Penelope Brobst Blackwell
Stephen Cormac Carlin
GREENBERG TRAURIG LLP
2200 Ross Avenue, Ste. 5200
Dallas, TX 75201
blackwellp@gtlaw.com
carlins@gtlaw.com

Terry R. Weiss
Greenberg Traurig, LLP
3290 Northside Parkway
Suite 400 The Forum
Atlanta, GA 30327
weisstr@gtlaw.com

ATTORNEYS FOR RESPONDENTS:

Bruce B. Kemp
Paul J. Dobrowski
DOBROWSKI, LLP
4601 Washington Avenue, Suite 300
Houston, TX 77007
bkemp@doblaw.com
pjd@doblaw.com

/s/ Braden W. Sparks
Braden W. Sparks, Esq.